

# HOUSE BILL REPORT

## HB 3139

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### As Amended by the Senate

**Title:** An act relating to kinship caregivers' consent for mental health care of minors.

**Brief Description:** Clarifying kinship caregivers' consent for mental health care of minors.

**Sponsors:** By Representatives Pettigrew, Haler, Dickerson, Kagi, Dunn, Walsh, Darneille, Roberts, Hinkle, Morrell and Kenney.

#### **Brief History:**

##### **Committee Activity:**

Children & Family Services: 2/1/06, 2/2/06 [DP].

##### **Floor Activity:**

Passed House: 2/9/06, 98-0.

Senate Amended.

Passed Senate: 2/28/06, 47-0.

#### **Brief Summary of Bill**

- Clarifies that informed consent for medical care for a minor child includes mental health care.

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### HOUSE COMMITTEE ON CHILDREN & FAMILY SERVICES

**Majority Report:** Do pass. Signed by 9 members: Representatives Kagi, Chair; Roberts, Vice Chair; Walsh, Ranking Minority Member; Hinkle, Assistant Ranking Minority Member; Darneille, Dickerson, Dunn, Haler and Pettigrew.

**Staff:** Sonja Hallum (786-7092).

#### **Background:**

In Washington, a person has the right to make his or her own health care decisions. Under the principle of "informed consent," medical care must be explained to the patient so that he or she understands it and can make informed decisions. Treatment without consent, however, is allowed and will generally be provided in an emergency unless the patient indicates otherwise.

If the patient is determined to be incapacitated or incompetent to make health care decisions, a surrogate decision-maker must speak for him or her. If a person is under the age of 18, he or she is considered to lack capacity to make most health care decisions. However, a minor who is 13 years of age or older may make decisions regarding his or her mental health treatment.

For those decisions a minor is not given the authority to consent to by law, there is a specific hierarchy of decision-makers defined by statute. The following is the list of persons, in order of priority, who may consent to medical treatment on behalf of another person:

- (1) a guardian who has been appointed by a court;
- (2) the person named in the durable power of attorney with health care decision-making authority;
- (3) a spouse;
- (4) adult children;
- (5) parents; and
- (6) adult brothers and sisters.

If a child's caregiver is not a person who is on the above list, the caregiver may not consent to medical treatment for the child in his or her care. This situation applies to relative caregivers, also known as kinship caregivers, who may informally be caring for a related child.

In 2005, the Legislature passed Substitute House Bill 1281 which expanded the list of persons who may provide informed consent for medical care to include persons whom the parent has authorized to consent to medical care and relatives who represent themselves to be, or have a signed declaration stating they are, responsible for the medical care of the child. The legislation did not specify that the informed consent for medical care included consent for mental health care of a child.

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### **Summary of Bill:**

Language is added clarifying that informed consent for medical care includes mental health care in situations where the minor is not able to consent because he or she is under the age of majority and who is not otherwise authorized to provide informed consent.

The definition of "parent" is expanded for the purposes of the parent-initiated alternative for mental health treatment of minors and for outpatient mental health treatment to include persons with authority to provide informed consent for a minor.

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### **EFFECT OF SENATE AMENDMENT(S):**

Removes the change to the definition of parent for the purposes of parent-initiated mental health treatment of a minor resulting in limiting who may consent to parent-initiated mental health treatment of a minor exclusively to the parent of the minor child.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** The bill takes effect 90 days after adjournment of session in which bill is passed.

**Testimony For:** Last year we passed a bill to help kinship caregivers get health care for the children in their care. This is basically the same issue as last year, but clarifies that a kinship caregiver can get mental health treatment for a child. Many of us thought mental health was included last year, but there have been some concerns by providers that it is not clear. This isn't anything new. It just references the appropriate statute to do what we intended last year. It should be made as easy as possible for grandparents raising grandkids.

**Testimony Against:** None.

**Persons Testifying:** Representative Pettigrew, prime sponsor; Laurie Lippold, Children's Home Society; Ruth Shearer, Kinship Care Oversight Committee; and Lisa Thatcher, Washington State Hospital Association.

**Persons Signed In To Testify But Not Testifying:** None.